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BANNER & WITCOFF  
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WASHINGTON, DC 20001

EXAMINER
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SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/722,647

Applicant(s)

COOPER, CAREY

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 29-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11 and 29-40 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 1.17(e), was filed in this application after final rejection. Since this application is for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 07, 2003 has been entered.

### **Drawings**

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "pultruded connectors interposed between adjacent vertical wall panels for bounding together.... having opposed receiving pockets configured [to] receive and seal an interior of said enclosure" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### **Specification**

The brief descriptions of Figs. 28 and 29 do not appear to correspond with what is shown by Figs. 28 and 29 respectively.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject which the applicant regards as his invention.

Claims 6-9 and 31-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to what is being defined by the language of claims 31 and 33. The specification does not appear clear as to any "pultruded connectors interposed between adjacent wall panels for bounding together .... having opposed receiving pockets configured [to] receive and seal an interior of said enclosure" or "the connectors further comprise a two receiving pockets being opposed longitudinally".

Claim 6, line 4, it is not clear as to what is being defined by "one of a plurality of graphite and aramid fibers". Is claim 6 defining only one fiber?

Claim 9, line 4, it is not clear as to what is being defined by "one of a plurality of graphite and aramid fibers". Is claim 9 defining only one fiber?

Claim 29, it is not clear as to what is being defined by "a unidirectional roving therein the fiber resinous composite matrix".

Claim 31, it is not clear as to what is being defined by "...for bounding together". It is not clear as to what is being "bound" to what. Line 4, it is not clear as to what is being defined by "configured receive and seal".

Claim 33, it is not clear as to what is being defined by "a two receiving pockets".

### **Claim Rejections - 35 USC § 102**

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1, 2, 4, 5, 10, 11, 29-31, and 34-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Rothman. Rothman discloses, Figs. 1, 4, and 5, an enclosure having connecting wall, floor, and ceiling panels 20 formed of fiber resinous composite matrix having unidirectional glass fiber rovings, col. 7, lines 41-51, with planar sheet 22, 24 attached to a plurality of spaced support members 26, 44 disposed therebetween forming spaced interstitial pockets interposed between the planar sheets. Fiber resin angle members or connectors 26, including portions 28 thereof, serve to bond longitudinal wall panels to lateral wall panels as well as wall panels to either ceiling or floor panels. Overlapping joint is formed as by 28 of each connector 26. The panels comprise at least 40% fiberglass by weight, col. 7, lines 48-50. Bulkhead panel is any panel of the Rothman structure, particularly those preventing passage.

Claims 1, 2, 4-6, 10, 11, 31, and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohnishi et al. Ohnishi et al. discloses, Figs. 4, 6, 10, and 12 for

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example, an enclosure having connecting wall, floor, and ceiling panels 12-15 formed of fiber resinous composite matrix having glass or aramid or graphite fibers, col. 7, line 10, with planar sheet 100a, 100b attached to a plurality of spaced support members 102 disposed therebetween forming spaced interstitial pockets interposed between the planar sheets. Overlapping joint is formed as by 20a or 45. Bulkhead panel is any panel of the Ohnishi et al. structure, particularly those preventing passage.

Claims 1, 2, 4, 5, 10, 11, 31, 34-36, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore. Moore discloses, Figs. 1, 3, 4, 5, and 7-9, an enclosure having connecting wall, floor, and ceiling panels 24 formed of fiber resinous composite matrix having glass fibers, col. 2, lines 6-7, with planar sheet 116, 114 or 28, 36 attached to a plurality of spaced support members 32 disposed therebetween forming spaced interstitial pockets interposed between the planar sheets. Overlapping joint is formed as can be seen in Figs. 3, 4, 7, 8, and 9. Bulkhead panel is any panel of the Moore structure, particularly those preventing passage. Fiber resin angle members or connectors 52, 66, 76 serve to bond longitudinal wall panels to lateral wall panels as well as wall panels to either ceiling or floor panels.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the

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prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 9, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rothman in view of either Beckerman or Ohnishi et al.

Beckerman discloses forming a high strength panel of a fiber resinous composite matrix having glass or aramid or graphite fibers, col. 9, lines 32-36. To have formed the Rothman panels of a fiber resinous composite matrix having aramid fibers, thus producing a high strength panel assembly, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made, as taught by either of Beckerman and Ohnishi et al.

Claims 9, 29, 30, and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohnishi et al. in view of Rothman.

Arguments to Rothman may be found above. To have formed the Ohnishi et al. panels as a fiber resinous composite having a unidirectional roving along the panel facing or along the web of support members 102, thus providing improved longitudinal strength in the direction of the fibers, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made, as taught by Rothman.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of either Beckerman or Ohnishi et al.

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Beckerman discloses forming a high strength panel of a fiber resinous composite matrix having aramid fibers, col. 9, lines 32-36 while Ohnishi et al. teaches discloses forming a high strength panel of a fiber resinous composite matrix having glass or aramid or graphite fibers, col. 7, line 10,. To have formed the Rothman panels of a fiber resinous composite matrix having aramid fibers, thus producing a high strength panel assembly, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made, as taught by either of Beckerman and Ohnishi et al.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of either Beckerman or Ohnishi et al. as applied to claim 6 above, and further in view of Rothman.

Arguments to Rothman may be found above. To have formed the Ohnishi et al. panels as a fiber resinous composite having a unidirectional roving along the panel facing or along the web of support members 32, thus providing improved longitudinal strength in the direction of the fibers, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made, as taught by Rothman.

Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of Rothman.

Arguments to Rothman may be found above. To have formed the Moore et al. panels as a fiber resinous composite having a unidirectional roving along the panel



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facing or along the web of support members 32, thus providing improved longitudinal strength in the direction of the fibers, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made, as taught by Rothman.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3, 7, 8, 32, and 33 would be allowable if rewritten to overcome the rejection(s) under 35 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### **Response to Arguments**

Applicant's arguments filed October 07, 2003, with respect to Rothman, have been fully considered but are not persuasive. The panel assembly of Rothman serves to read upon the article defined by the respectively rejected claims. Applicant argues "pultrusion" however, the panels of Rothman can be formed as by pultrusion and thus serve to read upon the language of the rejected claims with the term "pultrusion" merely defining a process of manufacture. The product of Rothman and, the final product of the instant invention, (i.e., fiber resinous composite matrix with unidirectional fiber rovings), being one and the same. Otherwise, the patentability of a claim to a product does not depend on merely a difference in its method of production, but on whether the product

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itself is new and unobvious. In re Pilkington, 411 F.2d 348, 192 U.S.P.Q. 145, 147 (CCPA 1969). If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the product was made by a different process. In re Fessman, 489 F.2d 742, 180 U.S.P.Q. 324 (CCPA 1974) and In re Thorpe, 777 F.2d 695, 227 U.S.P.Q. 964 (Fed. Cir. 1985). When the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. In re Brown, 450 F.2d 531, 173 U.S.P.Q. 685 (CCPA This burden is NOT discharged solely because the product was derived from a process not known in the prior art. In re Fessman, supra.

As for Applicant's argument to Rothman disclosing a construction for above ground buildings, the claims rejected over Rothman appear directed to an enclosure per se.

Any inquiry concerning this communication or earlier communications from the examiner be directed to M. Safavi whose telephone number is (703) 308-2168.



M. Safavi  
January 12, 2004

**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**